



September 26, 2001

Mr. Manuel Gonzalez
Assistant Criminal District Attorney
County of Collin
210 South McDonald, Suite 324
McKinney, Texas 75069

OR2001-4317

Dear Mr. Gonzalez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 152424.

The Collin County Criminal District Attorney's Office (the "D.A.") received a request for all information related to charges of retaliation and harassment, including copies of arrest affidavits, for a specific individual. We note that you have not submitted information related to charges of harassment. We assume that to the extent that responsive information relating to charges of harassment exists, that information has been released. *See* Gov't Code §§ 552.301, .302. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted information contains a court docket sheet, an arrest warrant, and supporting affidavit that appear to have been filed with a court. Documents filed with a court are generally a matter of public record and may not be withheld from disclosure unless they are confidential under other law. *See* Gov't Code § 552.022(a)(17) (providing for required public disclosure of information that also is a matter of public court record); *see also* *Star-Telegram, Inc. v. Walker*, 834 S.W.2d 54 (Tex. 1992). Thus, we will consider whether these documents are confidential under law.

The arrest warrant and supporting affidavit contain Texas driver's license numbers that are confidential under section 552.130 of the Government Code. Section 552.130 provides in relevant part:

- (a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Therefore, the D.A. must withhold the Texas driver's license numbers in the arrest warrant and supporting affidavit under section 552.130.

You also claim that the submitted documents are excepted from disclosure under section 552.101 in conjunction with common law privacy. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). After review of the court docket sheet, arrest warrant, and supporting affidavit, we find that none of the information is excepted from required public disclosure under common law privacy in conjunction with section 552.101. The D.A. therefore may not withhold the court docket sheet, arrest warrant, and supporting affidavit under section 552.101 in conjunction with common law privacy.

Section 552.101 also encompasses information that is made confidential under other statutes. Criminal history record information ("CHRI") obtained from the National Crime Information Center (the "NCIC") or the Texas Crime Information Center (the "TCIC") is confidential under federal law and subchapter F of chapter 411 of the Government Code. Section 411.083 of the Government Code provides that any CHRI maintained by the Department of Public Safety (the "DPS") is confidential. Gov't Code § 411.083(a). Similarly, CHRI obtained from the DPS pursuant to statute also is confidential and may be disclosed only in very limited instances. *Id.* § 411.084; *see also id.* § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). In addition, where an individual's CHRI has been compiled by a governmental entity, the information takes on a character that implicates the person's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). The criminal docket sheet, arrest warrant, and supporting affidavit contain no CHRI. Thus, the D.A. may not withhold these documents under section 411.083 or *Reporters Committee*.

Next, we address your prosecutorial work product claim under section 552.108 of the Government Code for the remainder of the submitted information. Section 552.108(a)(3) provides that information is excepted from public disclosure if it is information that is either prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or information that reflects the mental impressions or legal reasoning

of an attorney representing the state. In *Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994), the Texas Supreme Court held that a request for a district attorney's "entire litigation file" was "too broad" and, quoting *National Union Fire Insurance Company v. Valdez*, 863 S.W.2d 458, 460 (Tex. 1993, orig. proceeding), held that "the decision as to what to include in [the file] necessarily reveals the attorney's thought processes concerning the prosecution or defense of the case." *Curry*, 873 S.W.2d at 380. Because the requestor in this instance seeks all the information in the D.A.'s file, we conclude that the D.A. may withhold the information contained in the requested file as attorney work product.

However, we note that section 552.108 does not except from required public disclosure "basic information about an arrested person, an arrest, or a crime." Gov't Code § 552.108(c); see *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, while you may withhold the submitted information under section 552.108, with the exception of the court-filed documents referenced above, you must release basic information about the arrested person, arrest, and crimes.

In summary, the D.A. may withhold the litigation file as attorney work product. However, the D.A. must release basic information and the documents that have been filed with a court after redaction of the Texas driver's license numbers.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental

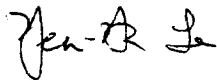
body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dept. of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/DKB/seg

Ref: ID# 152424

Enc. Submitted documents

c: Ms. Leslie Young
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(w/o enclosures)